

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey McCann	Team: Squad #14	CCRB Case #: 201906247	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/16/2019 9:55 PM	Location of Incident: 985 Park Place	Precinct: 77	18 Mo. SOL 1/16/2021	EO SOL 9/2/2021	
Date/Time CV Reported Tue, 07/16/2019 11:32 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 07/16/2019 11:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			077 PCT
2. POM Chandrapau Temal	09572	965561	077 PCT
3. POM Rochael Vasquez	10909	960049	077 PCT
4. POM Joshua Zucker	15733	958202	077 PCT
5. POM Christophe Messina	01448	961950	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Eric Delman	00000	922228	077 PCT
2. POM Umar Khitab	20552	952929	077 PCT
3. SGT John Nicolosi	03027	950949	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joshua Zucker	Force: Police Officer Joshua Zucker used physical force against § 87(2)(b)	
B.POM Chandrapau Temal	Force: Police Officer Chandrapaul Temal used physical force against § 87(2)(b)	
C.POM Rochael Vasquez	Force: Police Officer Rochael Vasquez used physical force against § 87(2)(b)	
D.POM Rochael Vasquez	Abuse: Police Officer Rochael Vasquez interfered with § 87(2)(b)'s use of a recording device.	
E.POM Christophe Messina	Force: Police Officer Christopher Messina used physical force against § 87(2)(b)	
F.POM Christophe Messina	Force: Police Officer Christopher Messina hit § 87(2)(b) against a vehicle.	

Officer(s)	Allegation	Investigator Recommendation
G.POM Christophe Messina	Discourtesy: Police Officer Christopher Messina spoke discourteously to § 87(2)(b)	
H. Officers	Force: Officers used physical force against § 87(2)(b)	
I.POM Christophe Messina	Force: Police Officer Christopher Messina used physical force against § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On July 16, 2019, § 87(2)(b) filed this complaint with the CCRB online regarding an incident he witnessed involving his neighbor, § 87(2)(b). On July 17, 2019, § 87(2)(b) filed a duplicate complaint with the CCRB via telephone on behalf of her son, § 87(2)(b). On July 20, 2019, § 87(2)(b) filed a duplicate complaint with the Mayor's Office on behalf of her son, § 87(2)(b). § 87(2)(b) did not witness the incident.

On July 16, 2019, at approximately 9:55 p.m., Lieutenant Eric Delman and Police Officer Umar Khatab, both of the 77th Precinct, were on patrol when PO Khatab saw § 87(2)(b) sitting in front of 985 Park Place in Brooklyn with several other males, including § 87(2)(b) and § 87(2)(b). § 87(2)(b) was rolling a marijuana cigarette. PO Khatab arrested § 87(2)(b). Lieutenant Delman requested additional units to the location for crowd control. Police Officer Joshua Zucker, Police Officer Chandrapaul Temal, Police Officer Rochael Vasquez, Police Officer Christopher Messina, and Sergeant John Nicolosi, all of the 77th Precinct, responded. PO Zucker and PO Temal used physical force against § 87(2)(b) who refused to leave the street, during the course of his arrest (**Allegations A and B: Force**, § 87(2)(g)). PO Vasquez and PO Messina pushed § 87(2)(b) who refused to move back from the area in which § 87(2)(b) was being arrested (**Allegations C and E: Force**, § 87(2)(g)). § 87(2)(b) and PO Vasquez interfered with § 87(2)(b)'s use of a recording device (**Allegation D: Abuse of Authority**, § 87(2)(g)). PO Messina hit § 87(2)(b) against a vehicle (**Allegation F: Force**, § 87(2)(g)). PO Messina told § 87(2)(b) "Give me your fucking hands" (**Allegation G: Discourtesy**, § 87(2)(g)) while trying to handcuff § 87(2)(b). Officers allegedly pushed § 87(2)(b) to the ground after he was handcuffed (**Allegation H: Force**, § 87(2)(g)). PO Messina pushed § 87(2)(b) into the police vehicle (**Allegation I: Force**, § 87(2)(g)). § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Surveillance footage and body-worn camera footage of this incident were received and will be discussed in further detail below.

Findings and Recommendations

Allegation (A) Force: Police Officer Joshua Zucker used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Chandrapaul Temal used physical force against § 87(2)(b)

The investigation established the following facts:

After Lieutenant Delman and PO Khatab approached § 87(2)(b) and arrested him, § 87(2)(b) and the other unidentified males crowded around Lieutenant Delman and PO Khatab while the officers attempted to place § 87(2)(b) into their vehicle. § 87(2)(b) recorded the officers on his cell phone and a crowd formed. Lieutenant Delman requested additional units and several uniformed and plainclothes officers responded. PO Zucker and PO Temal arrested § 87(2)(b) and PO Messina and PO Vasquez arrested § 87(2)(b).

It is undisputed that § 87(2)(b) refused to comply with officers' orders to move back to the sidewalk. It is further undisputed that PO Zucker and PO Temal used physical force while arresting § 87(2)(b).

§ 87(2)(b) (BR 11) testified that he was inside his home with his wife, § 87(2)(b) and sons when he heard screaming outside. § 87(2)(b) went to the second-floor window of his apartment with § 87(2)(b) where he saw at least four police vehicles. § 87(2)(b) said, "That's § 87(2)(b) and § 87(2)(b) and § 87(2)(b) immediately went outside." § 87(2)(b) was in handcuffs when § 87(2)(b) went outside, but he did not see how § 87(2)(b) was placed in

handcuffs.

§ 87(2)(b) (BR 01) provided a telephone statement before becoming uncooperative with the investigation. In his telephone statement, § 87(2)(b) said that when Lieutenant Delman and PO Khitab walked § 87(2)(b) to the car, § 87(2)(b) and his friends followed. Additional officers arrived and began pushing people back toward the sidewalk. § 87(2)(b) told the officers he was not stepping back because he and his friends did not do anything wrong. § 87(2)(b) asked the officers why they were putting § 87(2)(b) into the car. PO Zucker grabbed § 87(2)(b) arm and § 87(2)(b) pulled his arm away. Two other officers grabbed both § 87(2)(b) arms and arrested him.

Surveillance footage was obtained from Friends of Crown Heights (BR 02-03), an educational center located at 963 Park Place in Brooklyn. The footage can be viewed in its entirety in IA 18 using the Genetec player (BR 34). The time stamps mentioned throughout this report are reflective of subclips of the relevant aspects of the surveillance footage.

The surveillance footage (BR 02) depicts § 87(2)(b) who has blond tips and is wearing a black t-shirt, standing in the street in front of a marked police car speaking with PO Temal. Lieutenant Delman's silver sedan is in front of § 87(2)(b) is in the rear passenger's seat of Lieutenant Delman's vehicle. § 87(2)(b) walks toward Lieutenant Delman's vehicle and lifts his hands straight in the air. § 87(2)(b) continues to walk toward the other side of the street with his hands in the air. PO Zucker follows § 87(2)(b) and puts his hand on § 87(2)(b) chest. § 87(2)(b) lowers his arms. PO Zucker raises his right arm and § 87(2)(b) raises his left arm. A struggle then ensues between PO Zucker and § 87(2)(b) in which PO Zucker and § 87(2)(b) grab each other's arms. § 87(2)(b) back is against a dark-colored SUV, which is parallel parked. PO Temal runs over to PO Zucker and § 87(2)(b) PO Temal grabs § 87(2)(b) right arm while PO Zucker remains on § 87(2)(b) right side. The officers push § 87(2)(b) against a white Jeep, which is also parallel parked. § 87(2)(b) approaches the officers and § 87(2)(b) and records the incident on his cell phone. PO Zucker and PO Temal hold § 87(2)(b) against the Jeep (see time stamps on player <<00:43 – 01:43>>).

In PO Temal's body-worn camera footage (BR 04-05), PO Zucker stands with § 87(2)(b) says, "Don't touch me," and appears to push PO Zucker's arms to his left. PO Temal turns toward the street and tells an unidentified female to stand back. PO Temal's camera becomes blurry. § 87(2)(b) says, "Why's he touching me, bro? I'm not doing nothing, bro" (<<00:30 – 00:53>>).

PO Zucker (BR 06) and PO Temal (BR 07) provided consistent testimony that § 87(2)(b) physically resisted PO Zucker's efforts to handcuff him by moving his body and arms forward.

PO Zucker testified that when he arrived on scene, he performed crowd control by giving the crowd verbal commands to "get back" and extending his arms outward with open palms to move people back. PO Zucker could not estimate how many people were in the crowd. § 87(2)(b) refused to comply and remained in the street. As PO Zucker outstretched his arms to move § 87(2)(b) back, § 87(2)(b) grabbed PO Zucker's hand. § 87(2)(b) was considered under arrest at this time for grabbing PO Zucker's hand and refusing to comply with PO Zucker's orders. PO Zucker pulled his hand back and broke free from § 87(2)(b) grip. PO Zucker grabbed one of § 87(2)(b) arms, but PO Zucker was unable to grab § 87(2)(b) other arm because § 87(2)(b) resisted by "swaying his body" in an attempt to "shake [PO Zucker] off." PO Temal assisted PO Zucker by pulling § 87(2)(b) other arm. PO Zucker, PO Temal, and Sgt. Nicolosi collaboratively handcuffed § 87(2)(b).

PO Temal testified that he did not see what preceded § 87(2)(b) arrest, but saw PO Zucker trying to hold § 87(2)(b) and place § 87(2)(b) hand behind his back, but § 87(2)(b) continued to pull his arms forward in front of his body. PO Temal grabbed one of § 87(2)(b) hands and gave § 87(2)(b) verbal commands to stop resisting. After "no more than a few minutes," PO Temal and PO Zucker handcuffed § 87(2)(b).

PO Zucker and PO Temal each prepared Threat, Resistance, or Injury (TRI) Reports, which were consistent with their respective testimonies (BR 08-09).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In determining whether the use of force is reasonable, members of the service should consider, including but not limited to the following: nature and severity of the crime/circumstances; actions taken by the subject; duration of said action; and whether the subject is actively resisting. NYPD Patrol Guide Procedure 221-01 (BR 10).

§ 87(2)(b), § 87(2)(g)

Allegation (C) Force: Police Officer Rochael Vasquez used physical force against § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Rochael Vasquez interfered with § 87(2)(b)

s use of a recording device.

Allegation (E) Force: Police Officer Christopher Messina used physical force against § 87(2)(b)

§ 87(2)(b) (BR 11) testified that once he was outside, two uniformed officers grabbed § 87(2)(b) § 87(2)(b) could not remember if he saw an officer knock § 87(2)(b) s phone out of his hand during the incident, or if he saw this after the incident in a video.

§ 87(2)(b) (BR 12) provided a telephone statement before becoming uncooperative with the investigation. § 87(2)(b) said that when the police arrived at the location, he and his friend, § 87(2)(b) (known to the investigation as § 87(2)(b) began recording on their cell phones. Officers touched § 87(2)(b) and § 87(2)(b) recorded the officers doing so. Three officers pointed at § 87(2)(b) and approached him. § 87(2)(b) moved backward and continued to ask the officers why his friends were being arrested. PO Vasquez slapped § 87(2)(b) s cell phone out of his hand. § 87(2)(b) became angry and cursed at PO Vasquez. PO Vasquez and PO Messina “charged” at § 87(2)(b) to affect his arrest.

In a cropped subclip (BR 35) of the surveillance footage referenced above, after PO Zucker and PO Temal hold § 87(2)(b) against the white Jeep, § 87(2)(b) who is wearing a black t-shirt and gray shorts, approaches and records the officers. The subclip was created to better capture § 87(2)(b) s initial interaction with PO Vasquez and PO Messina, but the video can be viewed in its original format in IA 166 (BR 02). § 87(2)(b) appears to be less than a foot away from the officers. An officer points at § 87(2)(b) PO Messina and PO Vasquez approach § 87(2)(b) PO Vasquez pushes § 87(2)(b) on his chest three times and § 87(2)(b) moves backward toward parked vehicles. § 87(2)(b) continues to hold his phone. After the third push, PO Vasquez hits § 87(2)(b) s phone with his right hand, causing it to bounce off a parked vehicle and land between two parked cars. PO Vasquez pushes § 87(2)(b) a fourth time. PO Messina also pushes § 87(2)(b) backward (<<00:00 – 00:19>>).

PO Vasquez’s body-worn camera (BR 36) footage is somewhat shaky, but does show PO Vasquez extend both his arms outward and push § 87(2)(b) who is wearing a black t-shirt, on his chest twice (<<00:00 – 00:11>>).

In Lieutenant Delman’s body-worn camera footage (BR 13, 05), Lieutenant Delman approaches the white Jeep where officers are arresting § 87(2)(b) is standing in front of the Jeep. Lieutenant Delman says, “Get him back. Get him back. Get back.” PO Vasquez

charged at him, PO Messina slammed § 87(2)(b)'s head against a vehicle and rubbed § 87(2)(b)'s face into the ground. § 87(2)(b) provided his hands to the officers and was subsequently arrested.

§ 87(2)(b) did not see what happened after officers grabbed § 87(2)(b) but knew he was arrested because he later saw him in handcuffs.

§ 87(2)(b) (BR 33), § 87(2)(b)'s mother, also provided a telephone statement before becoming uncooperative with the investigation. § 87(2)(b) said when she approached the scene, officers were already arresting § 87(2)(b). When the officers lifted § 87(2)(b) off the ground, § 87(2)(b) saw bruises on him. § 87(2)(b) did not elaborate as to where on § 87(2)(b)'s person she saw the bruises.

In the surveillance footage, after PO Messina pushes § 87(2)(b) slowly approaches PO Messina and appears to be yelling at him. PO Vasquez grabs § 87(2)(b) near his biceps and pushes § 87(2)(b) toward Lieutenant Delman's vehicle. PO Messina also grabs § 87(2)(b) but it is not clear where PO Messina grabs him. § 87(2)(b) and the officers struggle and move toward a parked black sedan. § 87(2)(b) is bent at the waist with his face down. At 01:57, PO Messina uses his right forearm to strike § 87(2)(b) on his upper back area. § 87(2)(b)'s head then hits the hood of the vehicle. PO Vasquez is holding § 87(2)(b)'s left forearm. PO Messina and PO Vasquez then move § 87(2)(b) to the ground. A crowd then stands between the black sedan and another vehicle, which blocks the view of the camera (<<01:52 – 02:10 >>).

In Lieutenant Delman's body-worn camera footage, after PO Messina and PO Vasquez push § 87(2)(b) back, § 87(2)(b) screams at PO Messina, "Suck my dick, nigga." Lieutenant Delman says, "Take him. Take him. Cuff him up. Cuff him up." Lieutenant Delman moves from the passenger's side of his vehicle to the driver's side. PO Messina and PO Vasquez grab § 87(2)(b). At the black sedan, PO Messina appears to grab § 87(2)(b) somewhere on his upper body. § 87(2)(b) screams and a thud noise is heard. Lieutenant Delman then turns away from the officers and § 87(2)(b) (<<05:12 – 05:24>>).

As discussed in Allegations C, D, and E, PO Messina's and PO Vasquez's body-worn camera footage is too blurry to determine what is occurring.

PO Messina, who was § 87(2)(b) old at the time of the incident, 5'10" tall, and 190 pounds, testified that after Lieutenant Delman instructed him to arrest § 87(2)(b) he attempted to grab § 87(2)(b) with PO Vasquez, but § 87(2)(b) "went limp" and fell into the hood of a parked vehicle and onto the ground. PO Messina did not recall which part of § 87(2)(b)'s body made contact with the hood of the vehicle. PO Messina denied intentionally hitting § 87(2)(b) into the hood of the vehicle.

PO Messina reviewed the surveillance footage and testified that § 87(2)(b) went "limp" as soon as he gets to the hood of the car and bends over. PO Messina was trying to have § 87(2)(b) stand up, but § 87(2)(b) dropped his weight to the ground.

PO Vasquez, who was § 87(2)(b) at the time of the incident, 5'11" tall, and 219 pounds, did not recall § 87(2)(b) landing on the hood of a parked vehicle during the struggle. After reviewing the surveillance footage, PO Vasquez testified that § 87(2)(b) went limp as the officers were "trying to place § 87(2)(b)'s hands behind his back." When asked to identify the point in the footage where § 87(2)(b) went limp, PO Vasquez was unable to do so.

According to § 87(2)(b)'s arrest photograph (BR 17), § 87(2)(b) is § 87(2)(b). § 87(2)(b)'s arrest photograph shows a lump on the right side of his forehead with a small laceration. The side profile photograph depicts small lacerations on the left side of § 87(2)(b)'s face.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In determining whether the use of force is reasonable, members of the service should consider, including but not limited to, the following: nature and severity of the crime/circumstances; actions taken by the subject; duration of said action; whether the subject is

actively resisting; and the size, age, and condition of the subject in comparison to the MOS. NYPD Patrol Guide Procedure 221-01.

§ 87(2)(b), § 87(2)(g)

Allegation (G) Discourtesy: Police Officer Christopher Messina spoke discourteously to

§ 87(2)(b)

Neither § 87(2)(b) nor § 87(2)(b) alleged that PO Messina spoke discourteously to § 87(2)(b).

§ 87(2)(b)

In PO Messina's body-worn camera footage (BR 18, 05), when the audio component is activated, PO Messina says, "Give me your fucking hands" twice. PO Messina also says, "Stop resisting," repeatedly (<<00:30 – 00:46>>) The screen is mostly dark and therefore it is difficult to determine what is occurring.

PO Messina did not recall telling § 87(2)(b) "Give me your fucking hands." PO Messina reviewed this aspect of his body-worn camera footage but could not confirm his voice as the voice saying, "Give me your fucking hands." However, PO Messina did hear his voice in the video, but could not determine if he or PO Vasquez was the officer saying, "Give me your fucking hands."

Although PO Messina could not definitively identify his voice as the voice saying, "Give me your fucking hands," given that the footage was recorded on PO Messina's body-worn camera and was affixed to his uniform at the time of the discourteous statement, the investigation determined that PO Messina told § 87(2)(b) "Give me your fucking hands."

While officers are held to a high standard of conduct, traditional rules of etiquette cannot be applied to stressful enforcement situations. Disciplinary Case 2013-10143 (BR 19).

§ 87(2)(b), § 87(2)(g)

Allegation (H) Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) testified that as officers and § 87(2)(b) walked, they either shoved or tripped § 87(2)(b) causing him to fall face-first on the ground. § 87(2)(b) was not sure if § 87(2)(b) was handcuffed at this time.

§ 87(2)(b) did not allege in his telephone statement that officers shoved or tripped him during the incident.

In the surveillance footage, after PO Messina and PO Vasquez lift § 87(2)(b) who is handcuffed, off the ground, § 87(2)(b) attempts to pull away from the officers. § 87(2)(b) PO Messina, and PO Vasquez move toward a parallel parked black Jeep. Several officers continue to walk § 87(2)(b) down the street. § 87(2)(b) again appears to pull away from the officers. § 87(2)(b) falls in the middle of the street. Another officer, who is standing on § 87(2)(b)'s left, also falls to the ground. The officers pick § 87(2)(b) up off the ground and continue walking him down the street (<<02:53 – 03:19>>).

PO Messina testified that as the officers were walking § 87(2)(b) to a police vehicle, § 87(2)(b)

§ 87(2)(b) again became limp and “threw himself” to the ground. PO Messina did not recall if any officer fell to the ground with § 87(2)(b).

PO Vasquez testified that § 87(2)(b) fell because he stiffened his body, refused to walk, and jerked his shoulder forward. PO Vasquez and PO Messina also fell to the ground as a result of § 87(2)(b)'s movement.

§ 87(2)(b), § 87(2)(g)

Allegation (I) Force: Police Officer Christopher Messina used physical force against § 87(2)(b).

§ 87(2)(b) testified that after § 87(2)(b) was arrested, he stepped off the sidewalk and stood between two parallel parked cars so that he could see § 87(2)(b) standing with two officers near a marked police vehicle. The rear door to the police vehicle was open. Two uniformed officers, who § 87(2)(b) could not describe, intentionally slammed § 87(2)(b) into the frame of the car, pulled him away from the car, and then placed him inside the vehicle.

§ 87(2)(b) did not allege that officers used force against him to place him in a police vehicle.

PO Messina testified that § 87(2)(b) refused to get inside the police vehicle. PO Messina grabbed § 87(2)(b) to place him inside the vehicle, but could not remember exactly what actions he took to get § 87(2)(b) inside the vehicle.

PO Vasquez testified that there was no issue placing § 87(2)(b) inside the police vehicle and had no recollection of PO Messina pushing § 87(2)(b) into the police vehicle. Similarly, PO Temal did not recall § 87(2)(b) refusing to get inside the vehicle or PO Messina forcibly placing § 87(2)(b) inside the vehicle.

In PO Temal's body-worn camera footage, PO Temal assists officers in walking § 87(2)(b) to the police vehicle. § 87(2)(b) curses at the officers and calls them “weak ass niggas.” Officers place § 87(2)(b) against the police vehicle. § 87(2)(b) says, “Stop feeling on my dick, you faggot.” PO Temal says, “Stop resisting” and his arm unintentionally obstructs his camera. § 87(2)(b) says, “Stop touching my dick, bro. I fucking hate y'all, bro. I swear to God, son.” An officer says, “Get in there.” § 87(2)(b)'s sneakers stick out of the rear door of the vehicle as if he was on his side in the vehicle (<<02:55 – 03:40>>).

The surveillance footage does not capture § 87(2)(b) being placed into the police vehicle after he was arrested.

§ 87(2)(b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party (BR 21-24).
- § 87(2)(b)
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- PO Zucker has been a member of service for five years and has been a subject in three CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
- PO Temal has been a member of service for two years and has been a subject in two prior CCRB complaints and two allegations, neither of which was substantiated. § 87(2)(g)
- PO Vasquez has been a member of service for four years and has been named a subject in 11 CCRB complaints and 29 allegations, two of which were substantiated:
 - 201806017 involved a substantiated allegation of a vehicle stop. The Board recommended formalized training and the NYPD did not impose discipline.
 - 201906017 involved a substantiated allegation of property damage. The Board recommended formalized training that the NYPD has not yet imposed discipline.
 - § 87(2)(g)
- PO Messina has been a member of service for three years and has been named a subject in three CCRB complaints and three allegations, none of which were substantiated. PO § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of September 13, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 26).
- § 87(2)(b) § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date